# Jambri bin Abd Hamid v Public Prosecutor

HIGH COURT (JOHOR BAHRU) — CRIMINAL APPEAL NO 42A-03 OF 2008
AHMADI ASNAWI JC
26 MARCH 2009

*Criminal Law — Corruption — Corruptly receiving gratification — Appeal against conviction and sentence — Whether sessions court judge was correct in assessment of evidence — Whether presumption under s 42(1) of the Anti-Corruption Act 1997 had been properly invoked — Anti-Corruption Act 1997 ss 10(b)(aa) & 42(1)*

The appellant a police sergeant in the service of the PDRM at the material time was charged for accepting a bribe of RM450 from Sharul Nizam bin Ahmad and Mohd Shufor bin Md Jelani ('the first and second complainants'), and thereby committing an offence under s 10(b)(aa) of the Anti-Corruption Act 1997 ('the Act'). The two complainants had been brought before the magistrates' court and placed under a supervision order pursuant to s 6(1)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 for a period of two years. Prior to the making of the supervision order the appellant had allegedly approached the first complainant and offered his assistance in helping the two complainants. After the supervision orders were made and served on the complainants, the appellant allegedly approached the complainants again and handed to each of them a piece of paper with the appellant's telephone number. He had then told the complainants that they had to be ready with their monies in return for the appellant's assistance in procuring the supervision orders instead of their being sent to a detention centre. The two complainants went to the BPR office to lodge a report over the appellant's demand and a joint report was recorded by the officer in charge. The complainants alleged that thereafter the appellant had on numerous occasions called the first complainant to make threatening remarks as to when the money was going to be paid. The first complainant then replied that he would pay the money on 18 October 2004 at between 10 and 11am and promised to telephone again about the meeting. On 18 October 2004, the complainants informed BPR of the latest development. The BPR team immediately went into action to trap the appellant. The first complainant was then directed by the BPR team to telephone the appellant and to agree as to the amount to be paid and the place to make the payment. The telephone conversation between the appellant and the first complainant wherein the latter offered to give RM450

which was allegedly accepted by the former was tape recorded by a member of the BPR team. The parties had also agreed to meet at the new bus station at Jalan Rugayah for the alleged transaction to take place. The BPR team then provided the complainants with the RM450 ('trap money') that was used to trap the appellant. While the complainants were walking towards the ticketing counter of the bus station they met the appellant. In front of one of the ticketing counters, the first complainant gave the trap money to the appellant, who accepted the same and placed it immediately in his right trouser pocket. The first complainant then lifted his cap which was the agreed signage to the BPR team who were keeping watch of the complainants and the appellant. When the signage was given, the BPR team stationed nearby sprung into action and arrested the appellant. The arresting officers then ordered the appellant to hand over the trap money and the latter did so by retrieving the trap money from his right trouser pocket. In his defence the appellant denied meeting the complainant to accept the trap money and alleged that the trap money was placed in the palm of his hand when he shook hands with the appellant. He alleged that the money fell to the ground and that before he could do anything about it he was arrested by the BPR officers. The sessions court judge found that the appellant's defence was nothing but a bare denial and thus convicted and sentenced the appellant for the offence of accepting a bribe. This was the appellant's appeal against that conviction and sentence. In his petition of appeal the appellant submitted, inter alia, that the trial judge erred in law and fact when he used the term 'balasan' and 'dorongan' instead of the term 'upah' as applied in the charge; when he failed to assess whether the first complainant was an accomplice in the commission of the alleged crime by the appellant; when he failed to take into consideration the discrepancies in the evidence of the two complainants; when he failed to consider whether the tape recording was proven according to law.

**Held**, dismissing the appellant's appeal against conviction and sentence:

(1) It was not wrong for the sessions court judge to describe the acceptance of the corrupt money by the appellant as 'dorongan' or 'balasan'. In the context of the evidence as a whole the demand and acceptance of monies by the appellant could either be described as an 'upah' or 'dorongan' or 'balasan'. It carries the same meaning no less and as such did not occasion a miscarriage of justice to render the trial judge's findings a nullity (see para 19).

(2) In the instant case it was the appellant rather than the complainants who played the most active role in making the demand for money. The complainant reported the appellant's corrupt demand to the BPR without wasting any time and kept the latter informed as to the latest

development. As such the first complainant could not be a *particeps criminis* in the commission of the crime by the appellant (see para 20).

(3) Based on the totality of the evidence, the contradictions referred to by the appellant were only minor ones. As such these discrepancies did not erode the credibilities of the complainants (see para 24).

(4) The tape recording of the conversation between the first complainant and the appellant was recorded by the investigation officer ('the IO') of the complaint case. The notes of evidence indicated that the IO had done all that was necessary under the law to preserve the originality of the tape recordings and to prevent tampering of the same. As such, the trial judge had correctly admitted the tape recording as evidence. Further the truth of the conversation in the tape recording was fortified by the fact that the appellant turned up at the place designated by the first complainant at the appointed time (see paras 39–31).

(5) The sessions court judge having considered the appellant's defence in its entirety in the light of the prosecution's evidence concluded that the defence was merely a defence of bare denial and it failed to rebut the legal presumption under s 42 of the Act. The trial judge was entirely correct to opine that the prosecution was entitled to invoke the presumption under s 42 of the Act (see para 41).

(6) The only witness to testify that the trap money fell to the ground was the appellant. Both the complainants testified that after receiving the trap money the appellant pocketed it in his right trouser pocket. The arresting officers also testified that the appellant withdrew the trap money from the right trouser pocket. The evidence was overwhelming that the appellant had accepted the RM450 and there was no reason for the complainants or the arresting officers to bear any grudges against the appellant. As such, the findings of the trial judge in not believing the appellant's version of events is not without basis. The trial judge was also correct in finding that the appellant had failed to raise a reasonable doubt on the prosecution case against the appellant. Mere denial without other proof could not cast a reasonable doubt on the prosecution's case (see paras 33–34, 41 & 46).

(7) In respect of the sentence imposed against the appellant, the sessions court judge was right in finding that this was not a fit and proper case to grant mercy upon the appellant. The conduct of the appellant in all the circumstances of the case was most despicable and irresponsible and warranted a custodial sentence. The sentence imposed befitted the crime and there was no reason to interfere otherwise (see para 48).

**[Bahasa Malaysia summary**

Perayu seorang sarjan polis dalam perkhidmatan PDRM pada masa matan

telah dituduh kerana menerima rasuah sejumlah RM450 daripada Sharul Nizam bin Ahmad dan Mohd Shufor bin Md Jelani ('pengadu-pengadu pertama dan kedua'), dan oleh itu melakukan kesalahan di bawah s 10(b)(aa) Akta Pencegahan Rasuah 1997 ('Akta tersebut'). Kedua-dua pengadu itu telah dibawa ke hadapan mahkamah majistret dan diletakkan di bawah perintah pengawasan menurut s 6(1)(b) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 untuk tempoh dua tahun. Sebelum perintah pengawasan dibuat perayu telah dikatakan berjumpa dengan pengadu pertama dan menawarkan bantuannya untuk menolong kedua-dua pengadu tersebut. Selepas perintah-perintah pengawasan tersebut dibuat dan disampaikan ke atas pengadu-pengadu, perayu dikatakan telah berjumpa dengan pengadu-pengadu tersebut sekali lagi dan memberikan setiap seorang daripada mereka sekeping kertas dengan nombor telefon perayu. Dia kemudian memberitahu pengadu-pengadu tersebut yang mereka hendaklah bersedia dengan wang sebagai balasan bantuan perayu untuk mendapatkan perintah-perintah pengawasan tersebut agar mereka tidak dihantar ke pusat tahanan. Kedua-dua pengadu tersebut telah ke pejabat PBR untuk membuat laporan tentang tuntutan perayu dan laporan bersama yang direkodkan oleh pegawai yang bertugas. Pengadu-pengadu tersebut mendakwa berikutan itu perayu telah beberapa kali memanggil pengadu pertama untuk membuat kata-kata ugutan bila wang tersebut akan dibayar. Pengadu pertama kemudian menjawab yang dia akan membayar wang itu pada 18 Oktober 2004 antara pukul 10 dan 11 pagi dan berjanji untuk menelefon semula tentang perjumpaan itu. Pada 18 Oktober 2004, pengadu-pengadu tersebut telah memberitahu BPR tentang perkembangan terkini. Pasukan BPR dengan segera telah bertindak untuk memerangkap perayu. Pengadu pertama kemudian diarahkan oleh pasukan BPR untuk menelefon perayu dan untuk bersetuju dengan jumlah yang perlu dibayar dan tempat membuat pembayaran itu. Percakapan telefon antara perayu dan pengadu pertama di mana pengadu pertama telah membuat tawaran untuk memberikan RM450 yang dikatakan telah diterima oleh perayu telah direkodkan dalam pita rakaman oleh seorang ahli daripada pasukan BPR itu. Pihak-pihak juga telah bersetuju untuk berjumpa di stesen bas baru di Jalan Rugayah untuk melakukan transaksi yang dikatakan itu. Pasukan BPR kemudian telah memberikan RM450 kepada pengadu-pengadu tersebut ('wang perangkap') yang digunakan untuk memerangkap perayu. Semasa pengadu-pengadu tersebut sedang berjalan menuju ke kaunter tiket stesen bas itu mereka berjumpa dengan perayu. Di hadapan salah satu daripada kaunter tiket itu, pengadu pertama telah memberikan wang perangkap itu kepada perayu, yang telah menerimanya dan meletakkannya dengan segera ke dalam poket kanan seluarnya. Pengadu pertama kemudian mengangkat topinya yang merupakan tanda yang telah dipersetujui untuk pasukan BPR yang sedang berkawal memerhatikan pengadu-pengadu tersebut dan perayu. Apabila tanda itu diberikan, pasukan BPR yang ditugaskan berhampiran bertindak dengan segera dan menangkap perayu. Pegawai-pegawai tangkapan kemudian telah

mengarahkan perayu menyerahkan wang perangkap tersebut dan dia telah berbuat demikian dengan mengeluarkan wang perangkap tersebut daripada poket kanan seluarnya. Dalam pembelaannya perayu menafikan telah berjumpa pengadu untuk menerima wang perangkap tersebut dan mengatakan bahawa wang perangkap tersebut telah diletakkan ke tapak tangannya semasa dia berjabat tangan dengan perayu. Dia mengatakan bahawa wang itu jatuh ke tanah dan sebelum dia sempat berbuat apa-apa tentangnya dia telah ditangkap oleh pegawai-pegawai BPR. Hakim mahkamah sesyen mendapati pembelaan perayu hanya penafian kosong semata-mata dan oleh itu telah mensabitkan dan menghukum perayu kerana kesalahan menerima rasuah. Ini adalah rayuan perayu terhadap sabitan dan hukuman tersebut. Dalam petisyen rayuannya perayu menghujahkan, antara lain, bahawa hakim perbicaraan terkhilaf dari segi undang-undang dan fakta apabila beliau menggunakan istilah 'balasan' dan 'dorongan' dan bukan istilah 'upah' seperti yang digunakan dalam pertuduhan; apabila beliau gagal menilai sama ada pengadu pertama rakan sejenayah dalam melakukan jenayah yang dikatakan oleh perayu; apabila beliau gagal untuk mengambilkira percanggahan-percanggahan keterangan kedua-dua pengadu tersebut; apabila beliau gagal mempertimbangkan sama ada rakaman pita telah dibuktikan menurut undang-undang.

**Diputuskan**, menolak rayuan perayu terhadap sabitan dan hukuman:

(1) Hakim mahkamah sesyen tidak salah untuk menyifatkan penerimaan wang korup oleh perayu sebagai 'dorongan' atau 'balasan'. Dalam konteks keterangan secara keseluruhannya tuntutan dan penerimaan wang oleh perayu boleh sama ada disifatkan sebagai 'upah' atau 'dorongan' atau 'balasan'. Ia membawa lebih kurang maksud yang sama dan oleh itu tidak menyebabkan kesilapan keadilan untuk menjadikan penemuan hakim perbicaraan tersebut sebagai terbatal (lihat perenggan 19).

(2) Dalam kes ini perayu dan bukan pengadu-pengadu tersebut yang telah memainkan peranan paling aktif dalam membuat tuntutan wang itu. Pengadu telah melaporkan tuntutan korup perayu kepada BPR tanpa membuang masa dan sentiasa memaklumkan BPR tentang perkembangan terkini. Oleh itu pengadu pertama tidak mungkin merupakan *particeps criminis* dalam melakukan jenayah oleh perayu (lihat perenggan 20).

(3) Berdasarkan keseluruhan keterangan, percanggahan-percanggahan yang dirujuk oleh perayu tidak ketara. Oleh itu percanggahan-percanggahan tersebut tidak menjejaskan kebolehpercayaan pengadu-pengadu tersebut (lihat perenggan 24).

(4) Rakaman pita perbualan antara pengadu pertama dan perayu telah dirakamkan oleh pegawai penyiasat ('IO') tentang aduan kes. Nota-nota keterangan menunjukkan bahawa IO telah melakukan segala yang patut di bawah undang-undang untuk mengekalkan ketulenan rakaman pita itu dan menghalang daripada mengubah yang sama. Oleh itu, hakim perbicaraan dengan betul telah menerima rakaman pita itu sebagai keterangan. Selanjutnya, kebenaran perbualan dalam rakaman pita itu diperkuatkan dengan hakikat bahawa perayu telah hadir di tempat yang ditetapkan oleh pengadu pertama pada masa yang ditentukan (lihat perenggan 29–31).

(5) Hakim mahkamah sesyen yang telah mempertimbangkan pembelaan perayu secara keseluruhan berdasarkan keterangan pendakwaan telah memutuskan bahawa pembelaan tersebut hanya pembelaan penafian kosong semata-mata dan ia telah gagal untuk menyangkal andaian perundangan di bawah s 42 Akta tersebut. Hakim perbicaraan secara keseluruhan adalah betul untuk berpendapat bahawa pendakwaan berhak untuk menggunakan andaian di bawah s 42 Akta tersebut (lihat perenggan 41).

(6) Satu-satunya saksi yang memberi keterangan bahawa wang perangkap itu telah jatuh ke tanah adalah perayu. Kedua-dua pengadu tersebut telah memberi keterangan bahawa selepas menerima wang perangkap itu perayu telah memasukkannya ke dalam poket kanan seluarnya. Pegawai-pegawai tangkapan juga telah memberi keterangan bahawa perayu telah mengeluarkan wang perangkap itu daripada poket kanan seluarnya. Keterangan kukuh menunjukkan perayu telah menerima RM450 itu dan tiada sebab untuk pengadu-pengadu tersebut atau pegawai-pegawai tangkapan tersebut menaruh apa-apa dendam terhadap perayu. Oleh itu, penemuan-penemuan hakim perbicaraan yang tidak mempercayai versi kejadian perayu mempunyai asas. Hakim perbicaraan juga betul dalam penemuan bahawa perayu telah gagal untuk menimbulkan keraguan munasabah atas kes pendakwaan terhadap perayu. Penafian semata-mata tanpa bukti lain tidak boleh menimbulkan keraguan munasabah atas kes pendakwaan (lihat perenggan 33–34, 41 & 46).

(7) Berhubung hukuman yang dikenakan terhadap perayu, hakim mahkamah sesyen adalah betul dalam penemuan bahawa ini bukan kes yang sesuai dan wajar untuk memberi pengampunan kepada perayu. Perlakuan perayu dalam semua keadaan kes adalah keji dan tidak bertanggungjawab dan mewajarkan hukuman tahanan. Hukuman yang dikenakan sesuai dengan jenayah tersebut dan tiada sebab untuk campur tangan sebaliknya (lihat perenggan 48).]

**Notes**

For cases on corruptly giving gratification, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 97–100.

**Cases referred to**

*DA Duncan v PP* [1980] 2 MLJ 195, FC (refd)
*Gurbachan Singh v PP* [1966] 2 MLJ 125; [1966] 1 LNS 57, HC (refd)
*Kee Yik Kwok @ Kee Yuk Kwok v PP* [2005] 1 LNS 75, HC (refd)
*Mohd Ali Jaafar v PP* [1998] 4 MLJ 210; [1996] 4 CLJ Supp 208, HC (refd)
*Mohd Mocta Shariff v PP* [1983] CLJ 634 (Rep), HC (refd)
*Mohd Sallehuddin bin Mohd Yusoff v Pendakwa Raya* [2005] 3 AMR 491, HC (distd)
*Ng Kok Lian & Anor v PP* [1983] 2 MLJ 379; [1983] CLJ (Rep) 293, FC (refd)
*PP v Chew Yoo Choi* [1990] 2 MLJ 444, HC (not folld)
*PP v You Kong Lai* [1985] 1 MLJ 298; [1984] 2 CLJ 429 (Rep); [1984] 1 CLJ 379, HC (refd)
*PP v Yuvaraj* [1969] 2 MLJ 89, PC (refd)
*San Soo Ha v PP* [1968] 1 MLJ 34; [1967] 1 LNS 155, HC (refd)
*Thavanathan a/l Balasubramaniam v PP* [1997] 2 MLJ 401, SC (refd)

**Legislation referred to**

Criminal Procedure Code s 294
Dangerous Drugs Act 1952 ss 6, 12(2), 39(1)
Drug Dependants (Treatment and Rehabilitation) Act 1983 s (1)
Drug Dependants (Treatment and Rehabilitation) Act 1983 (Amendment) 1998 s 6(1)(b)
Evidence Act 1950 ss 74, 76, 114(g)

*Vijaya Sandran a/l Tangavellu (Vijaya Sandran & Associates) for the appellant.*
*Shahrullah Khan bin Nawab (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

**Ahmadi Asnawi JC:**

**[1]** The appellant appealed against his conviction and sentence imposed by the learned sessions court judge, Batu Pahat upon the following charge preferred against him:

> Bahawa kamu pada 18hb Oktober 2004 jam lebih kurang 12.05 tengahari dihadapan Kaunter Syarikat Bas Express KKKL, Tingkat Bawah, Bangunan Menara Majlis Perbadanan Batu Pahat, No 101 Jalan Rugayah, 83000, Batu Pahat, dalam Daerah Batu Pahat di dalam Negeri Johor Darul Takzim, sebagai pegawai badan awam, iaitu Sarjan RF 60153, Bahagian Narkotik Ibu Pejabat Polis Daerah Batu Pahat telah secara rasuah menerima bagi diri kamu suatu suapan iaitu wang tunai RM450 daripada Sharul Nizam bin Ahmad dan Mohd Shukor bin Md Jelani mendapatkan perintah diletakkan di bawah pengawasan pegawai polis mengikut Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 dan dengan itu kamu telah melakukan satu kesalahan dibawah seksyen 10(a)(bb) Akta Pencegahan Rasuah 1997 (Akta 575) yang boleh dihukum di bawah seksyen 15 Akta yang sama.

**[2]** The facts in brief are as follows. A

**[3]** On 26 September 2004, the complainant, SP7, while riding his motorcycle with SP8 as his pillion, was stopped by three policemen on suspicion of going against the traffic lights, of being in possession of a stolen motorcycle, of being involved with drug abuse and snatch theft. Both were B taken to Balai Polis Batu Pahat for further investigations. There were cleared of all suspicions except for drug abuse whereupon they were then taken to the Narcotics Divisions. The next day they were brought before the magistrate for a remand order pending their urine tests and medical examinations. C

**[4]** On 6 October 2004 they were taken to Poliklinik Hospital, Jalan Kluang for medical examinations. While waiting at the Balai's canteen for the police vehicle to bring them to the Poliklinik, SP7 casually asked the appellant whether he could be released. The appellant was alleged to have responded '*Kalau aku lepaskan apa kau nak bagi*?'. D

**[5]** SP7 added that at the Poliklinik, while waiting for his turn to see the doctor, the appellant allegedly told SP7 '*… sikit bukan RM50, banyak bukan RM1000.00. Faham-faham sendiri …*'. E

**[6]** On 8 October 2004 both SP7 and SP8 were brought before the magistrates' court for an order under Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 (Pindaan) 1998. Both were placed under a supervision order pursuant to s 6(1)(b) of the same for a period of two years. F

**[7]** After the appearance before the magistrate was done and the supervision orders duly served on them, the appellant approached both SP7 and SP8 and handed to each of them a piece of paper (exhs P9 and P12) containing the appellant's telephone No 012–7684974. The appellant then G told both SP7 and SP8 to contact him if both are ready with their monies in return for his (appellant's) assistance in procuring the said supervision orders instead of being sent to Pusat Tahanan Serenti.

**[8]** On 9 October 2004 both SP7 and SP8 went to BPR office in Batu H Pahat to lodge a report over the appellant's demand. Exhibit P8 is their report. SP14 took down their joint report.

**[9]** On 11 October 2004, SP7 again went to Balai Polis Batu Pahat to hand over a copy of his NRIC. On his way to make a photocopy of the same, he I met the appellant who promptly asked whether the money is ready. SP7 replied that he was still unemployed. Thereupon the appellant gave him a reminder that he is to phone him if the money is ready. SP7 also gave his friend's (Kassim) telephone No 019–7417915 to the appellant (a notation of

this number was also seized from the appellant upon his arrest as per item No 3 of exh P22) for the appellant to call him.

**[10]** On 13 October 2004 at about 11.45am while at work, SP7 received a telephone call from the appellant through Kassim's hand phone. The appellant again asked when is money the going to be paid. The appellant also allegedly remarked '… *aku dah tolong, engkau bohong, nanti aku tangkap kau, kalau tak bayar masuk pusat* …'. SP7 replied that he has no money as yet. The appellant responded that he is only asking RM500–RM600 and not RM1000. Fearful of being rearrested, SP7 promised to pay the said sum on 18 October 2004.

**[11]** On 17 October 2004, SP7 was again contacted by the appellant who again demanded to know as to when the money is going to be paid. SP7 replied that he will pay the money on 18 October 2004 at about 10am–11am and promised to telephone him before meeting him to make the payment.

**[12]** On 18 October 2004, SP7 with SP8 proceeded to inform BPR office Batu Pahat of the latest development. The BPR team immediately went into action. SP6 conducted a briefing of the operation to be mounted. SP7 and SP8 were told how the money is to be transacted. SP7 was then asked to call the appellant through the telephone number given by the appellant as shown in exhs P9 and P12 relating to the amount to be paid and the place to make the payment. The telephone conversation between the appellant and SP7 were tape-recorded by SP14. In the said conversation SP7 offerred to give RM450 and was allegedly accepted by the appellant. The appellant further agreed to come and accept the money at the new bus station at Jalan Rugayah as suggested by SP7.

**[13]** SP7 was then given RM450 (trapped money) — P12A–G comprising of two pieces of RM100 denominations and five pieces of RM50 denominations by the BPR team. The acknowledgement the said acceptance is P11 (Senarai Wang Bertanda).

**[14]** Both SP7 and SP8 were next driven by the BPR team to the bus station and were dropped in front of Merry Brown fast-food chain, located in front of the Jalan Rugayah bus station. Both then walked towards the ticketing counter of the bus station. Along the way, the appellant appeared and called both of them to go to his car. However, SP7 responded that he was in a hurry to purchase a bus ticket to go to Muar to work there and requested the appellant to follow him to the ticketing counter. The appellant followed SP7 to the counter.

**[15]** In front of one of the ticketing counters, SP7 gave the RM450 to the appellant. The appellant accepted the said sum and immediately to put the said money into his trousers pocket. The appellant then advised both of them to maintain their good behavior and observed the terms of the supervision orders. This transaction was witnessed by SP8. SP7 next lifted his cap (topi) the agreed signage to indicate that the said RM450 has been given to and accepted by the appellant.

**[16]** Upon the said signage, the members of the BPR team stationed within the vicinity sprung into action and the appellant very soon after was arrested by SP9 and SP10. As the place where the arrest took place was congested, the appellant was taken to a walkway/passage within the bus station. There he was joined by other BPR officers — SP11, SP12, SP13 and SP14. Pursuant to SP9's orders, the appellant retrieved the RM450 given to him by SP7 from his right trousers pocket. This was witnessed and confirmed by both SP9 and SP10. The investigations confirmed that this RM450 was the trapped money given by the BPR to SP7 to be given to the appellant.

**[17]** In his petition of appeal, the appellant advanced almost 68 grounds of appeal formatted in main paragraphs followed by sub paragraphs. However, upon scrutiny of the same, I am of the view that grounds Nos 3.3, 3.4, 3.7, 3.9, 3.10, 3.11, 3.19, 3.20. 3.21, 3.22, 3.23, 3.27, 3.30, 4.0, 5.2, 5.3, 5.7, 5.9 and 5.10 are issues relevant to proving an offence for solicitation. However, the appellant here was charged for an offence of acceptance and not solicitation. It is trite that both are separate offences and solicitation is not an ingredient to prove acceptance. The learned sessions judge had adequately considered the issues and his findings does not warrant interference by me.

**[18]** In paras 3.3 and 3.5 of the petition, the appellant contended that the learned sessions judge had failed to consider SP1 and SP3's testimonies that the appellant did not assist the complainant (SP7) to procure the supervision orders and that the prosecution had failed to prove that the appellant did indeed assisted SP7 and SP8 to procure the said supervision order. The short answer to this issue is given in *Gurbachan Singh v Public Prosecutor* [1966] 2 MLJ 125; [1966] 1 LNS 57 where it was held that '… on a charge of receiving bribe under the Prevention of Corruption Act 1960, it was not necessary to prove that favour had been shown. Prosecution have merely to prove that the accused person did receive a bribe as an inducement to show favour; they are not required to prove that he did actually show favour in consequence of having received the bribe'. See also *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89; *Public Prosecutor v You Kong Lai* [1985] 1 MLJ 298; [1984] 2 CLJ 429 (Rep); [1984] 1 CLJ 379; and *Kee Yik Kwok @ Kee Yuk Kwok v*

*Public Prosecutor* [2005] 1 LNS 75. This issue raised by learned counsel has been settled a long times ago. It is a non-issue altogether. Learned counsel is merely wasting his time and effort.

**[19]** In paras 3.6 and 3.7 of the petition learned counsel contended that the learned sessions judge erred in law and fact when he used the term '*balasan*' and the term '*dorongan*' in his grounds of judgment as seen at pp 29 and 43 respectively of RR instead of the term '*upah*' as applied in the charge. I could not see how this could nullify his findings nor occasioned a miscarriage of justice or substantially prejudiced the appellant. In my view, it is only a misuse of nomenclature. What is a lot more important is the gist of the judgment itself. It is obvious that from the reading of his judgment as a whole, the learned sessions judge opined that the acceptance of the corrupt money by the appellant amounted to nothing less than an '*upah*' for the so called services rendered by the appellant ie to procure the supervision orders for both SP7 and SP8. It is not wrong for the learned sessions judge to intermingly described the same as '*dorongan*' or '*balasan*'. In the context of the evidence as a whole, the said demand and acceptance of the monies by the appellant could either be described as an '*upah*' or '*dorongan*' or '*balasan*'. It carries the same meaning no less. The failure of the learned sessions judge to piously follow the script in the charge does not in any way occasioned a miscarriage of justice to render his findings a nullity. Learned counsel is indeed very petty.

**[20]** Next in para, 3.8 learned counsel alleged that the learned sessions judge failed to assessed whether SP7 was an accomplice in the commission of the crime by the appellant. In this respect, I need only refer to the Federal Court case of *Ng Kok Lian & Anor v Public Prosecutor* [1983] 2 MLJ 379; [1983] CLJ (Rep) 293 at p 298–bc. In this case, before me, the evidence shows that SP7 did not play an active role. He merely asked the appellant whether he could be released. Beyond that, it was the appellant who played the most active role in making the demand all the way. Additionally SP7 did not waste time in reporting the appellant's corrupt demand to the BPR. The appellant used every opportunity to harassed SP7, even threatening to rearrest SP7 and have him transported to Pusat Tahanan Serenti if he (SP7) renegade on his promise to pay up. Again, he wasted no time in reporting to BPR over the latest development. In such event, surely he cannot be considered as an accomplice in the commission of the crime. He was not a particeps criminis. He agreed to pay and in fact paid the money to obliged the appellant's persistent demands. Indeed SP7's conduct was wholly within the ambit of s 44(1)(a)(ii) and (iii) of the Prevention of Corruption Act 1997. SP7 is entitled to be fully protected by the said provision of the law.

**[21]** In para 3.2 learned counsel contended that the learned sessions judge erred in law and fact when he found that the plaintiff is an agent of the Government of Malaysia when the maker of exh P6 (perakuan tentang kedudukan atau jawatan yang dipegang oleh RF/60153 Jambri b Abd Hamid — di bawah s 47(1) Akta Pencegah Rasuah 1997) was not called to testify. I have scrutinised the judgment of the learned sessions judge and I agree fully with his reasoning in admitting exh P6 as evidence though the maker was not called. Exhibit P6 is a public document within the meaning s 74 and 76 of the Evidence Act 1950. SP4, the head of Bahagian Pengurusan IPD Batu Pahat is the custodian of the said document. Ordinarily the document was under his care and custody. He was also authorised to confirmed the contents of exh P6 which is infact an extract of the appellant's service book. He confirmed that he signed exh P6. He also confirmed that exh P7 is copy of the appellant's Kenyataan Perkhidmatan. He also signed on the last page of exh P7. In such event the law is trite that he is competent to produce the documents and have the same admitted in evidence. Being a public document there is no need to call the maker of the same. In his oral testimony SP4 confirmed the rank of the appellant in PDRM and at the material time he was attached with Cawangan Narkotik IPD Batu Pahat. Additionally SP5 who was then the chief of Cawangan Narkotik at IPD Batu Pahat confirmed that the appellant served as a assistant investigation officer in his Cawangan. He was a sergeant and his scope of work includes the investigation of cases falling under ss 39(1), 12(2) and 6 of the Akta Dadah Berbahaya 1952, as well as offences caught under s 3(1) of Akta Penagih Dadah (Rawatan dan Pemulihan) 1983.

**[22]** In my view, there are more than enough evidence both oral and documentary to prove that the appellant is an agent of the Government of Malaysia namely a police sergeant in the service of PDRM at the material time.

**[23]** As regards to paras 3.10 and 3.11 of the petition, I think the issues raised therein are non-issues for both SP7 and SP8 never testified that the appellant was in the same police van bringing both of them to the hospital for their urine tests to be taken. Likewise, there is no need at all to have an ID parade over the three policemen who first arrested SP7 and SP8 on the night of 26 August 2004. The reason being simply that all these three policemen were never implicated in any wrong doing nor accused of any wrong doing by SP7 and SP8.

**[24]** The contradiction referred to by learned counsel in para 3.12 of the petition in my view is only a minor one. In exh P8, SP7 did not state exactly where the demand for the corrupt money was made by the appellant, whereas in court SP7 testified that the demand was made at the Balai Polis while

A waiting for the police vehicle to bring them to the hospital followed by the demand at the Poliklinik Hospital, by the passing of written notes containing the appellant's telephone numbers, the demand at the Balai when SP7 came back to submit a photocopy of his NRIC and the numerous telephone calls thereafter. The other was that in exh P8 the appellant was alleged to have B demanded RM250, from each of them (SP7 and SP8), the total sum of which came to RM500 whereas in court the SP7 testified that the appellant merely said '*… sedikit bukan RM50.00 banyak bukan RM1000.00 …*'. In my mind, to SP7 the sum demanded by the appellant was a figure somewhere in between RM1000, ie RM500. In that sense there is no contradiction in the C figures demanded by the appellant from both of them in SP7's report to BPR. In any event, on the totality of the evidence adduced by both SP7 and SP8 the said descrepancies does not in anyway erode the credibilities of both SP7 and SP8.

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**[25]** Paragraphs 3.14, 3.15 and 3.16 are wholly irrelevant. I could not see how the issues raised therein could in anyway have a bearing on the court's findings.

E **[26]** In respect of paras 3.17 and 3.18, I am of the view that there is nothing to prevent the court from admitting exhs P9 and P12 in evidence as the said exhibits were properly produced through SP7 and SP8 respectively who both got the exhibits directly from the appellant. Equally it makes no complete sense to call an expert witness to verify whether the telephone F number, written therein were written by the appellant as both SP7 and SP8 saw the appellant writing the said telephone number before giving a copy each to both of them. In any event the appellant never denied nor put to the prosecution witnesses that the said telephone number were not his. Equally, this was the same telephone number used by SP7 to call and communicate G with the appellant before meeting him to hand over the corrupt money. The BPR team duly recorded this conversation. The transcript is exh P18.

**[27]** As regards to paras 3.21 and 3.22, Kassim played no role at all except to allow SP7 to forward his (Kassim's) telephone number to the appellant for H the appellant to contact and communicate with SP7. In fact SP7 was offered as a witness to the defence. In such event there is no basis to entertained learned counsel's contention that s 114(g) of the Evidence Act should be invoked against the prosecution on account of the prosecution's failure to call Kassim to testify. The failure by the prosecution to call Kassim does not I occasioned a gap in the prosecution's case.

**[28]** The same is equally true in respect of Cpl Basiron (paras 3.24 and 3.25 of the petition). The prosecution could not be said to have attempted to hide the identity of this person when this person was offered to the defence

as a witness at the end of the prosecution's case. Equally there is no hard and fast rule that the prosecution ought to conduct a voice comparision between the appellant and Cpl Basiron when Cpl Basiron was never a suspect in the first place. There was no evidence that he was investigated in connection with SP7's report. He was only called to have his statement recorded. But what is a lot more relevant is the fact that SP7 had spoken with the appellant over the telephone on several occasions and he was quick to identify the appellant's voice when the tape recording (exh P17) was replayed in court.

**[29]** In para 3.26 of the petition, learned counsel contended that the learned sessions judge failed to consider that the tape recording, exh P17, was not proven according to law. The tape recording of the conversation between SP7 and the appellant on 18 October 2004 was done by SP14. He is also the IO of the case. The notes of evidence indicated what SP14 did before and after the said tape recording was done:

(a) he used a new micro tape which was still in its original wrappings;

(b) the commencement of the recordings was preceded with a opening statement;

(c) concluded the tape recordings with a closing statement;

(d) broke the safety pin of the micro tape after the recordings;

(e) recorded the police report number; date, time and affixed his signature on the micro tape;

(f) played the tape over after the recordings;

(g) kept the said micro tape in safe custody under lock and keys; and

(h) prepared a transcript of the said recording as per exh P18.

**[30]** It is obvious from the above that SP14 has done what he has to do under the law to preserve the originality of the tape recordings and to prevent tampering of the same (see *Mohd Ali Jaafar v Public Prosecutor* [1996] 4 CLJ Supp 208). In such event, the learned sessions judge correctly admitted exh P17 in evidence. There is no plausible enough reason to depart from his findings.

**[31]** As regards to paras 3.27 and 3.30 of the petition, there is nothing to show that the appellant did in fact ask for the corrupt money from SP7 from the said exh P17. In such event, the learned sessions judge was correct in not considering the said tape recordings in so far as the demand for the corrupt money is concerned. However, this does not mean that the appellant did not ever make such demand. The crux of the demand was made during the days preceding the conversation that was tape-recorded and this aspect of the

demand was adequately considered and taken into account by the learned sessions judge. The IO was also correct on the facts when he said that the appellant did not make any demand for corrupt money in P17. Exhibit P17 was the tail end of the appellant's demand. Exhibit P17 only goes to show that SP7 now has RM450 with him and the appellant agreed to accept the sum and agreed to collect the money at a place designated by SP7. The truth of the conversation in P17 is evinced and fortified by the fact that the appellant turned up at the place designated by SP7 and at the time appointed by SP7. The totality of the evidence further suggested that the appearance of the appellant at the place designated and at the time appointed by SP7 is by no means a coincident. It is stretching the imagination a bit too far to suggest that it is so in all the circumstances of the case.

**[32]** As regards to paras 4.0 and 4.1, all that was testified by SP7 was that at the trap scene (in front of one of the ticketing counters) he gave the money and the money was accepted by the appellant and soon after he took off his cap to signify that the money has been transacted. He did not testify that the appellant demanded for the money thereat — see p 94, lines 5–7 of the RR. Equally at p 114, lines 17–18 of the RR, SP8 agreed with learned counsel's suggestion that the appellant did not make any demand (for money) at the trap scene. What contradiction between the two witnesses is learned counsel arguing about?

**[33]** As regards to paras 4.2 and 4.3, the appellant is the only witness to testify that the said money fell to the ground at the time SP7 shook the appellant's hand. SP7 and SP8 testified that after receiving the money, the appellant immediately put the said money into his trousers pocket. The arresting officers, SP9 and SP10, witnessed the appellant retrieving the said money from his right trousers pocket upon being ordered by PW9 to produce the money he accepted/received from SP7. The appellant then gave the money to SP9 who then together with SP11 crosschecked the money with the Senarai Wang Bertanda, exh P11. In essence their testimonies showed that the said money never fell to the ground as contended by learned counsel. I have no reason to doubt the veracity of these witnesses and the testimonies they gave on the point in issue. Again I have no reason to favour the appellant's testimony over the testimonies given by the said four prosecution witnesses. The findings of the learned sessions judge over the same as evinced at p 41 line 14 to line 25 and at p 42 line 1 to line 7 is not without basis and there is no reason to interfere with the said findings. Additionally, as shown at pp 50–55 of the RR, the learned sessions judge had considered the defence of the appellant in its entirety vis-à-vis the whole body of evidence and not merely confining himself to the narrow issue of whether the said money fell to the ground moments after SP7 shook the appellant's hand. The learned sessions judge is entirely correct in doing so.

**[34]** As regards to para 4.4, SP7 gave the signal that the money has been transacted only after the said money was given to and accepted by the appellant. At the time the appellant was arrested by SP9 and SP10, the said money was already inside the appellant's right trousers pocket where it was retrieved from, consistent with the testimonies of SP7 and SP8 that the appellant put the money into his trousers pocket immediately (terus) after receiving it from SP7. It thus begs the question why would the appellant want to go (chase) after SP8 only after he had pocketed the money into his pocket. The further question is why would he want to go after SP8 when it was SP7 who gave the money to him? In my view this line of defence is a mere after-thought correctly rejected by the learned sessions judge.

**[35]** Paragraphs 4.5, 4.6, 4.7 and 4.9 is wholly irrelevant. The fact that SP9 and SP10 could not see the transaction taking place though they could see SP7 and the appellant talking to each other merely goes to show that both of them are truthful witnesses, not in the habit of creating evidence. Both of them gave their reasons for not being able to see the transaction and there is nothing wrong with the reasons given by them. In any event their inability to witness the transaction would not have had any effect on the findings of the learned sessions judge that the said money was indeed transacted and accepted/received by the appellant in the light of the uncontroverted testimonies of SP7 and SP8 and the factum of the recovery of the said money from the front right trousers pocket of the appellant. It is trite law that the recovery of the said money from the person of the appellant is the best independent corroborative evidence there is which conclusively proved that the appellant accepted/received the money.

**[36]** In respect of paras 4.8 and 4.10 I am of the view that there was no such thing that the exhibit (trapped money) was removed from location 'Y' to location 'X' as indicated in sketch plan exh P20. All that SP9 and SP10 did was to move the appellant from the place he was originally arrested to a quieter corner as the original location was congested with lots of people mingling around. What was done by SP9 and SP10 was most reasonable in all the circumstances of case and there is no known law in our statute books prohibiting them from doing so. I could not see how the appellant could have been prejudiced by his removal from the original location of his arrest. In any event at some point the appellant and the exhibits would still have to be removed to be taken to the Balai or BPR Office for further investigation.

**[37]** In respect of paras 4.11 and 4.12 I am of the view that learned counsel's contention is misplaced. Exhibit P11 is Senarai Wang Bertanda which was prepared at the time the trapped money was given to SP7 by SP14 to be given to the appellant. The contradiction suggested by learned counsel is just beyond me. Exhibit P11 has nothing to do with the recovery of the

trap money from the appellant. Equally there is no basis to suggest that exh P11 was not prepared according to law. The submission that the failure to give the caution under s 45(3) of the Prevention of Corruption Act ('the Act') is equally flawed as the said section has no nexus with the preparation of exh P11.

**[38]** As regards to para 4.13 learned counsel submitted that exh P13 (Senarai Harta Alih yang di Sita or Search List) recorded that the said money was recovered from the appellant's trounser's pocket and this contradicted exh P11 which makes no mention where the money was recovered from. In my view this submission is simply irrelevant. There is obviously no necessity to record the recovery of the said money in exh P11, as exh P11 is an entirely different document from exh P13 and exh P11 was made for a different purpose. Equally there is no requirement under the law that the caution under s 45(3) of the Act should be given first before the search list (exh P13) is prepared and done and the appellant made to acknowledged the same. The case quoted by learned counsel — *Public Prosecutor v Chew Yoo Choi* [1990] 2 MLJ 444 — has no application here. The facts there are not on all fours with the facts in this appeal before me. The appellant's acknowledgement of exh P13 could not have amounted to a confession, as the confessionary characteristics were not there. In my view exh P13 is only a record to show where the said money was recovered from and nothing more. It is normally produced by the prosecution to show consistency with the oral evidence in so far as the recovery of the exhibits is concerned. Additionally exh P13 is not a legal requirement but only an administrative mechanism. Even if it is not done it would not dent the prosecution's case. If the appellant strongly feels that the contents of exh P13 is not true or inaccurate there is nothing under the law to prevent him from registering his protest in exh P13 itself. He could have signed exh P13 under protest and make a notation therein of his version of the events as was done by the accused in *Mohd Sallehuddin bin Mohd Yusoff v Pendakwa Raya* [2005] 3 AMR 491 though there the accused made the notation on the notice of arrest. Here the appellant did none of this.

**[39]** I am further of the view that even if exh P13 is ruled to be inadmissible, it is not fatal to the prosecution's case. The prosecution could rely on other evidence making up the totality of the prosecution's case — see *San Soo Ha v Public Prosecutor* [1968] 1 MLJ 34; [1967] 1 LNS 155. Additionally there is no legal requirement that the search list (exh P13) must be prepared there and then *in situ*. It is only desirable that it should be done so to minimise mistakes or tampering. However, it must out of practical necessity be dependent upon the individual facts of each case. Even if there are discrepancies as to where and when the said exh P13 was prepared as submitted by learned counsel, in all the circumstances of the case it would not have had any bearing upon the findings of the learned sessions judge. The

evidence that the said money was given to and accepted by the appellant and the appellant immediately put the money into his trousers pocket and later recovered from the appellant's trousers pocket remains uncontroverted no matter where and when exh P13 was prepared. Indeed the note in exh P13 that the said money was recovered from the appellant's front trousers pocket is wholly consistent with the testimonies of SP7, SP8, SP9 and SP10.

**[40]** As regards to para 4.14, I have scrutinised the judgment of the learned sessions judge as shown at pp 32–43 of the RR and concluded that he was entirely correct to opined that the prosecution is entitled to invoke the presumption under s 42 of the Act. I am under no compulsion to interfere with his findings. The burden now shifted to the appellant to rebut the said presumption on a balance of probabilities. The rule in *Thavanathan a/l Balasubramaniam v Public Prosecutor* [1997] 2 MLJ 401, at p 421 was '*… it was for the accused to give an innocent explanation which the court considered more likely than not that it was true …*'. Having found that the appellant failed to rebut the said presumption at the stage of the prosecution's case, the learned sessions judge correctly called the appellant to enter his defence.

**[41]** As regards to paras 5.0–5.19, contrary to the submissions posited by learned counsel the learned sessions judge having considered the appellant's defence in its entirety in the light of the prosecution's evidence concluded that the defence is merely a defence of bare denial and it failed to rebut the legal presumption under s 42 of the Act. Conversely, the defence also failed to raise a reasonable doubt upon the prosecution's case — see pp 48–50 of the RR. The approach taken by the learned sessions judge at this stage is entire correct.

**[42]** In the light of the totality of the evidence, I am in complete agreement with the findings of the learned sessions judge that the appellant's defence is nothing more than a bare denial. As said by the learned sessions judge the appellant opted to deny knowing SP7 and SP8, making the demands at the Balai and Poliklinik Hospital, passing the notes containing his telephone number after the court proceedings, calling SP7 over the telephone on numerous occasions, making the threatening remarks and so forth. He also denied to have been at the trap scene pursuant to the telephone conversation that was tape recorded at the behest of SP7, but was there on his own volition for other purposes not connected with SP7 or the corrupt demand.

**[43]** He did not meet SP7 to accept the corrupt money at the trap scene but approached SP7 upon being called by SP7 whom he did not initially recognised that it was SP7 who called out to him as SP7 was wearing his cap in such away that it almost covered his face. He did not accept the corrupt money from SP7 but SP7 gave him or placed the money in his palm when

A he shook his hand with SP7 and the money fell to the ground before he could do anything with the same. He was arrested by the BPR officers before he could do anything over the money given to him, in particular to go after SP8.

B **[44]** However, I concurred with the view of the learned sessions judge that there is nothing innocent in the defence of the appellant. The evidence is overwhelming that the said RM450 was accepted by the appellant. There is no reason for SP7 and SP8 to concoct their evidence relating to the same. It was not shown anywhere that either SP7 or SP8 harboured a grudge to grind against the appellant. The appellant was not the officer who caused the initial C arrest of both SP7 and SP8 and was also not responsible for the issuance of the supervision orders. The acceptance of the said RM450 was completely corroborated by the recovery of the same from the appellant's front right trousers pocket as witnessed by both SP9 and SP10, both of whom equally D appeared to harbour no grudge to grind against the appellant to the extend that both were prepared to testify adversely against the appellant. SP7, SP8, SP9 and SP10 were seen and heard by the learned sessions judge and the learned sessions judge opined that these witnesses were credible witnesses whose testimonies could be relied upon. I have no business to judge E otherwise. Equally, the learned sessions judge saw and heard the appellant and his witnesses and upon the grounds succinctly given in his judgment, opted to favour the evidence given by prosecution witnesses. Again I have no business to judge otherwise. It is the learned sessions judge findings of fact which I am in full agreement with.

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**[45]** The learned sessions judge had considered everything relevant there is to be considered in the defence of the appellant and having done so he found that the defence put forth by the appellant were bare denial bareth of substance, incapable on the balance of probabilities of rebutting the G presumption invoked against him. On the totality of the evidence, I am completely with him.

**[46]** It is also his findings that the defence, on the totality of the evidence, equally failed to raise a reasonable doubt on the prosecution case against the H appellant. I am also in complete agreement with him. The mere denial of the appellant's evidence without other proof to reasonably dislodge the prosecution evidence failed to cast a reasonable doubt on the prosecution's case against the appellant (*DA Duncan v Public Prosecutor* [1980] 2 MLJ 195; *Mohd Mocta Shariff v Public Prosecutor* [1983] CLJ 634 (Rep). The evidence I of DW2 and DW3 merely confirmed that the appellant was not in the police van taking both SP7 and SP8 to the Poliklinik Hospital. This is consistent with the appellant's evidence that he went to Poliklinik Hospital on his own by his own car. However, this aspect of the evidence was never in issue. Both SP7 and SP8 never testified that the appellant was in the same police van

taking them to Poliklinik Hospital. Equally, both SP7 and SP8 never testified that the demand for the corrupt money was made in the police van on the way to the Poliklinik Hospital. What was clearly said by SP7 was that the solicitation for the corrupt money was initially made at the Balai's canteen while they were waiting for the police vehicle to bring them to Poliklinik Hospital and thereafter elsewhere as enumerated in the preceeding paragraphs. The evidence of DW2 and DW3 is of no help to the appellant's defence.

**[47]** For all the reasons given, the appellant's appeal against his conviction is dismissed.

**[48]** Paragraphs 6.0, 6.1 and 6.2 are in respect of the sentence imposed. At pp 58–62, the learned sessions judge gave his grounds for imposing the sentence imposed and dismissing the appellant's appeal for an order under s 294 of the CPC. Verily for the reasons given by the learned sessions judge, I am in complete agreement with him that this is not a fit and proper case to grant mercy upon the appellant by making such an order under s 294. The conduct of the appellant in all the circumstances of the case is most despicable and irresponsible. The crime committed by the appellant is now considered as the country's public enemy No 1. It justifiably warranted a custodial sentence. In my view, the sentence imposed by the learned sessions judge befits the crime. I have no reason to interfere otherwise. I also allowed the correction in respect of the amount of fine imposed. It is only a technical oversight which would not prejudiced the appellant in any way. Hence, the appeal against the sentence imposed is also dismissed.

*Appellant's appeal dismissed.*

Reported by Kohila Nesan